

FILED
2012 SE. 14 P 2:11
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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6 Attorneys for defendant
Citibank, N.A.

E-filing

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

LB

10
11 MARIAVIDA LEWIS,

12
13 Plaintiff,

14
15 vs.

16 CITIBANK, NATIONAL
17 ASSOCIATION, an FDIC insured
corporation and DOES 1 through 100
inclusive,

18
19 Defendants.
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CASE NO. 12

4844

NOTICE OF REMOVAL

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Citibank, N.A. ("Citibank") hereby
3 remove to this Court the state court action described below.

4 1. On August 13, 2012, a complaint was filed against Citibank by
5 plaintiff Mariavida Lewis ("Plaintiff"), in an action pending in the Superior Court
6 of the State of California in and for the County of San Francisco, entitled
7 *Mariavida Lewis v. Citibank, N.A., et al.*, Case No. CGC12-523202. A copy of the
8 state court Summons and Complaint, the Civil Case Cover Sheet, the Notice of
9 Case Management Conference and other documents issued by the state court
10 (collectively, "Complaint") is attached hereto as **Exhibit A**. Attached hereto as
11 **Exhibit B** is a true and correct copy of the Answer to the Complaint that was filed
12 in the state court on September 13, 2012.

13 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
14 Defendant was first served with a copy of the Complaint on August 17, 2012.

15
16 **JURISDICTION**

17 3. This action is a civil action of which this Court has original
18 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by
19 Defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
20 asserts federal claims against Defendant allegedly arising under, *inter alia*, the
21 federal Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* See Exhibit A,
22 Complaint at ¶¶ 1, 10, 19, 22-32.

23 4. The Complaint was filed in the Superior Court of the State of
24 California, County of San Francisco. Venue in this District Court is proper. See
25 28 U.S.C. § 1441(a) (providing for removal "to the district court of the United
26 States for the district and division embracing the place" where the state court action
27 is pending); 28 U.S.C. § 84(b) (The Northern District comprises the counties of,
28 *inter alia*, San Francisco).

1 5. Defendant is represented by the undersigned.

2
3 DATED: September 14, 2012

SIMMONDS & NARITA LLP
JEFFREY A. TOPOR
R. TRAVIS CAMPBELL

4
5
6 By: _____

Jeffrey A. Topor
Attorneys for defendant
Citibank, N.A.

Exhibit A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Citibank, National Association an FDIC insured corporation and DOES
1 through 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Mariavida Lewis

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO)** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen este citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco

400 McAllister Street
San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Elliot Gale, 333 West San Carlos Street, Suite 1750 San Jose, CA 95110, 1-408-279-2288

CASE NUMBER:
(Número del Caso): 00012-523202

DATE: August 13, 2012
(Fecha)

CLERK OF THE COURT
(Secretario)

DENNIS TOYAMA, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).)
(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Citibank, National Association, an FDIC insured corporation
under: ☒ CCP 418.10 (corporation) ☐ CCP 418.80 (minor)
☐ CCP 418.20 (defunct corporation) ☐ CCP 418.70 (conservatee)
☐ CCP 418.40 (association or partnership) ☐ CCP 418.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

(SEAL)

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): SCOTT J. SAGARIA (BAR # 217981) ELLIOT W. GALE (#263326) SAGARIA LAW, P.C. 333 West San Carlos Street, Suite 1750 San Jose, CA 95110 TELEPHONE NO.: 408-279-2288 FAX NO.: 408-279-2299 ATTORNEY FOR (Name): Mariavida Lewis		FOR COURT USE ONLY ENDORSED FILED SUPERIOR COURT COUNTY OF SAN FRANCISCO AUG 13 2012 CLERK OF THE COURT BY: DENNIS TOYAMA Deputy Clerk					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civil							
CASE NAME: Lewis v. Citibank, National Association							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">CIVIL CASE COVER SHEET</td> <td style="text-align: center;">Complex Case Designation</td> </tr> <tr> <td style="width: 33%; vertical-align: top;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>			CIVIL CASE COVER SHEET		Complex Case Designation	<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
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CASE NUMBER: 000 12-523202							

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (40) Other PIPD/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/W (23) Non-PIP/W (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (38)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Three**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-016.)

BY FAX
 Date: August 13, 2012
 Elliot Gale

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)
CIVIL CASE COVER SHEET
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740,
 Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)	Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos (04)	Collection Case—Seller Plaintiff	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (<i>not provisionally complex</i>) (18)	Enforcement of Judgment (20)
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Auto Subrogation	Abstract of Judgment (Out of County)
Medical Malpractice (46)	Other Coverage	Confession of Judgment (<i>non-domestic relations</i>)
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Sister State Judgment
Other Professional Health Care Malpractice	Contractual Fraud	Administrative Agency Award (<i>not unpaid taxes</i>)
Other P/DPDWD (23)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Real Property	Other Enforcement of Judgment Case
Intentional Bodily Injury/DPDWD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	RICO (27)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Other Complaint (<i>not specified above</i>) (42)
Other P/DPDWD	Writ of Possession of Real Property	Declaratory Relief Only
Non-P/DPDWD (Other) Tort	Mortgage Foreclosure	Injunctive Relief Only (<i>non-harassment</i>)
Business Tort/Unfair Business Practice (07)	Quiet Title	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Other Civil Complaint (<i>non-tort/non-complex</i>)
Fraud (16)	Commercial (31)	Miscellaneous Civil Petition
Intellectual Property (19)	Residential (32)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Other Petition (<i>not specified above</i>) (43)
Legal Malpractice	Judicial Review	Civil Harassment
Other Professional Malpractice (<i>not medical or legal</i>)	Asset Forfeiture (05)	Workplace Violence
Other Non-P/DPDWD Tort (35)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Employment	Writ of Mandate (02)	Election Contest
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Name Change
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ—Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

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San Jose, CA 95110
408-279-2288 ph
408-279-2299 fax

6 Attorneys for Plaintiff

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

AUG 13 2012

CLERK OF THE COURT

BY: DENNIS TOYAMA
Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

11
12 CASE NO.: CGC 12-523202

13
14 COMPLAINT FOR DAMAGES:

- 15 1. Violation of Fair Credit Reporting Act;
16 2. Violation of California Consumer Credit
Reporting Agencies Act;
17 3. Violation of California Unfair Business
Practices Act;

18 MARIAVIDA LEWIS,

19 Plaintiff,

20 v.

21 CITIBANK, NATIONAL ASSOCIATION
22 an FDIC insured corporation and DOES 1
23 through 100 inclusive,

24 Defendants.

BY FAX

25 COMES NOW Plaintiff MARIAVIDA LEWIS, an individual, based on information and belief,
26 to allege as follows:
27
28

INTRODUCTION

1
2 1. This action seeks redress for the unlawful and deceptive practices committed by the
3 Defendants in connection with their inaccurate reporting of Plaintiff's discharged debt.
4 In particular, Defendants' conduct involves inaccurately reporting Plaintiff's account as
5 "charged off" to Experian instead of reporting Plaintiff's account as discharged in
6 bankruptcy. Plaintiff seeks monetary and declaratory relief based on violations of Fair
7 Credit Reporting Act, 15 U.S.C. 1681s-2 et. seq. and California Consumer Credit
8 Reporting Act, California Civil Code §1785.1 et seq. Additional causes of actions are
9 stated for violations of the California Business and Professions Code 17200.

JURISDICTION AND VENUE

10
11
12 2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
13 every paragraph above, fully set forth herein.
14 3. Plaintiff, Mariavida Lewis (hereinafter "Plaintiff"), is an individual and currently
15 resides in the county of San Francisco, California.
16 4. This venue is proper pursuant to California Code of Civil Procedure § 395.5.
17 5. This Court has jurisdiction over Plaintiff's allegations pursuant to California Code of
18 Civil Procedure § 410.10 et seq.
19 6. Plaintiff is a natural person and competent adult who at all relevant times in this
20 Complaint resided in the State of California.
21 7. Defendant, Citibank, National Association (hereinafter "Creditor") is located at 701
22 East 60th Street North, Sioux Falls, South Dakota 57104. Creditor collects debts on its
23 own behalf throughout the county of San Francisco.
24 8. Plaintiff is unaware of the true names and capacities of Defendants DOES 1 through
25 100, inclusive. Plaintiff is informed and believes and thereon alleges that each fictitious
26 Defendant was in some way responsible for the matters and things complained of
27 herein, and in some fashion, has legal responsibility therefore. When the exact nature
28 and identity of each fictitious Defendant's responsibility for the matters and things
herein alleged are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint

1 and all proceedings to set forth the same, pursuant to California Code of Civil
2 Procedure 474.

- 3 9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, each of Defendant is, and at all relevant times herein was, the agent, employee,
5 and alter ego of each of the remaining Co-Defendants, and in committing the acts
6 herein alleged, was acting in the scope of their authority as such agents, employees, or
7 alter egos and with the permission and consent of the remaining Co-Defendants.

8 PRE-LITIGATION CLAIM FILINGS

- 9 10. On or about April 29, 2011 Plaintiff sent Experian a written notice disputing Creditor's
10 improper reporting of Plaintiff's account as "charged off" instead of discharged in
11 bankruptcy. Pursuant to Section 1681i(a)(2) of the Fair Credit Reporting Act, Experian
12 provided notice to Creditor of Plaintiff's dispute. After receiving notice of Plaintiff's
13 allegations, Creditor verified the reporting of Plaintiff's account with Experian without
14 removing the "charge off" notation.

15 GENERAL ALLEGATIONS

- 16 11. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
17 every paragraph above, as though fully set forth herein.
- 18 12. On March 5, 2010 Plaintiff filed a voluntary Chapter 7 bankruptcy petition in the
19 United States Bankruptcy Court for the Northern District of California.
- 20 13. In the Schedules filed with the petition in this case and on the master mailing matrix
21 filed with the Clerk of this Court, an unsecured debt was listed on Schedule F in favor
22 of Creditor in the amount of \$11,587.00 (hereinafter "Debt").
- 23 14. On June 22, 2010 Plaintiff was granted a discharge of all dischargeable debts pursuant
24 to 11 U.S.C. § 727. Creditor was noticed by electronic transmission of Plaintiff's
25 discharge on June 23, 2010. Since Plaintiff never re-affirmed Creditor's debt during
26 bankruptcy, Plaintiff alleges that this Discharge included the debt to Creditor.
- 27 15. On April 28, 2011 Plaintiff pulled his Informative Research credit report, a compilation
28 of reporting information from Experian, Transunion, and Equifax to ensure accurate

1 reporting. The report indicates that Creditor reported Plaintiff's account to Experian as
2 "charged off" despite Plaintiff's bankruptcy discharge.

3 16. On or about April 29, 2011 Plaintiff sent a letter to Experian requesting a formal, full,
4 and complete investigation of Creditor's account with Plaintiff. Specifically, Plaintiff
5 disputed with Experian Creditor's inaccurate reporting of Plaintiff's account as
6 "charged off" instead of discharged in bankruptcy.

7 17. On September 20, 2011 Plaintiff received his Experian credit report in order to verify
8 that the inaccuracies on Plaintiff's credit report were corrected. After receiving notice
9 of Plaintiff's dispute from Experian, Creditor re-reported to Experian that Plaintiff's
10 account was "charged off" even though the bankruptcy discharge removed any
11 obligation to pay Plaintiff's prepetition debt with Defendant. In addition, Creditor failed
12 to report to Experian that Plaintiff disputed the account information.

13 18. To date, Creditor refuses to correct Plaintiff's credit report despite being noticed of the
14 original bankruptcy and re-noticed of its inaccurate reporting from Experian.

15 19. The actions of Creditor as alleged herein are acts in violation of the Fair Credit
16 Reporting Act, 15 U.S.C. § 1681s-2(b).

17 20. The actions of Creditors as alleged herein are acts in violation of the consumer credit
18 reporting agencies act California Civil Code § 1785.25(a).

19 21. The actions of Creditors as alleged herein are acts in violation of the California
20 Business and Professions Code § 17200.

21 **FIRST CAUSE OF ACTION**

22 (Violation Of Fair Credit Reporting Act

23 15 U.S.C. § 1681s-2(b))

24 (Against Defendant Creditor and Does 1-100)

25 22. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
26 every paragraph above, as though fully set forth herein.

27 23. Creditor, in the course of regular business, reports information to credit reporting
28 agencies.

1 24. Plaintiff promptly disputed Creditor's inaccurate reporting with Experian. Experian
2 sent notice of Plaintiff's dispute to Creditor pursuant to Section 1681i(a)(2) of the Fair
3 Credit Reporting Act. Creditor was thereafter under a duty to reasonably investigate
4 Plaintiff's dispute pursuant to section 15 U.S.C. 1681s-2(b).

5 25. Plaintiff is informed that Creditor's investigation was unreasonable because Creditor
6 failed to discover that Plaintiff's account should have been reported as discharged in
7 bankruptcy instead of "charged off". Plaintiff alleges that Creditor inaccurately reported
8 the correct status of Plaintiff's account because as a result of the discharge order,
9 Plaintiff was no longer legally obligated to pay the prepetition debt owed to Creditor.

10 26. Plaintiff is informed that Creditor's investigation was unreasonable because Creditor
11 failed to discover by reporting Plaintiff's account as "charged off" post bankruptcy
12 without indicating the account was discharged, Creditor mislead other potential
13 creditors by indicating Creditor "charged off" the account at the time of bankruptcy
14 when Creditor had not done so.

15 27. Plaintiff is informed that Creditor separately violated 1681s-2(b) by failing to report to
16 Experian that the account information was in dispute after receiving notice of Plaintiff's
17 dispute from Experian.

18 28. Creditor should have discovered the inaccuracies on Plaintiff's credit report through its
19 investigation and should have modified, deleted, or blocked said information pursuant
20 to 15 U.S.C. § 1681s-2(b)(1)(E).

21 29. Creditor's failure to correct the previously disclosed inaccuracies on Plaintiff's credit
22 report was intentional and in reckless disregard of its duty to refrain from reporting
23 inaccurate information. Consequently, creditor willfully and negligently failed to
24 comply with its duty to investigate Plaintiff's dispute under 15 U.S.C. 1681(n) & (o).

25 30. As a direct and proximate result of Creditor's willful and untrue communications,
26 Plaintiff has suffered actual damages including but not limited to reviewing credit
27 reports from all three consumer reporting agencies, traveling to and from Plaintiff's
28 counsel's office, sending demand letters, and such further expenses in an amount to be
determined at trial.

1 31. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred
2 pain and suffering, was impeded in seeking necessary products and services from
3 vendors, additional credit from other credit agencies, suffered humiliation,
4 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

5 32. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

6 **SECOND CAUSE OF ACTION**

7 (Violation Of Consumer Credit Reporting Agencies Act
8 California Civil Code § 1785.25(a))
9 (Against Defendants Creditor and Does 1-100)

10 33. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
11 every paragraph above, as though fully set forth herein.

12 34. Creditor, in the ordinary course of business, regularly and on a routine basis furnishes
13 information to one or more consumer credit reporting agencies.

14 35. Creditor intentionally and knowingly reported inaccurate and false information
15 regarding delinquencies in payment after Plaintiff received a discharge in bankruptcy to
16 credit reporting agencies and date of discharge in violation of California Civil Code §
17 1785.25(a).

18 36. Creditor should have discovered through investigation that the reported information of
19 Plaintiff's account is inaccurate.

20 37. Creditor failed to notify consumer reporting agencies that the information Defendant
21 provided such agencies, was inaccurate before the end of 30 business days, in violation
22 of California Civil Code § 1785.25(a).

23 38. Creditor failed to correct inaccurate information provided to the agencies as described
24 hereinabove in violation of California Civil Code § 1785.25(a).

25 39. Creditor's communications of false information, and repeated failures to investigate,
26 and correct their inaccurate information and erroneous reporting were done knowingly,
27 intentionally, and in reckless disregard for their duties and Plaintiff's rights.
28

1 40. As a direct and proximate result of Creditors willful and untrue communications,
2 Plaintiff has suffered actual damages including but not limited to reviewing credit
3 reports from all three consumer reporting agencies, traveling to and from Plaintiff's
4 counsel's office, sending demand letters, and such further expenses in an amount to be
5 determined at trial.

6 41. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred
7 pain and suffering, was impeded in seeking necessary products and services from
8 vendors, additional credit from other credit agencies, suffered humiliation,
9 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

10 42. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

11 **THIRD CAUSE OF ACTION**

12 (Unfair Business Practices Act
13 California Business and Professions Code § 17200)
14 (Against Defendant Creditor and Does 1-100)

15 58. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
16 every paragraph above, as though fully set forth herein.

17 59. Plaintiff brings this action in individual capacity and on behalf of the general public.

18 60. Creditor at all times relevant to this Complaint, was engaged in the business of
19 collections and providing services on credit to qualified applicants.

20 61. Commencing on or about January 18, 2011 and continuing to the present, Creditor
21 committed the acts of unlawful practices as defined by Business and Professions Code
22 § 17200 and described in the above stated Causes of Action.

23 62. Creditor's acts and practices described above were unlawful under the California Civil
24 Code § 1785.25(a) and therefore constitute unlawful practices within the meaning of
25 Business and Professions Code § 17200.

26 63. These unlawful business practices of Creditor are likely to continue and therefore will
27 continue to injure Plaintiff by inaccurate record keeping, failure to correct inaccuracies
28

1 and erroneous dissemination of inaccurate information, and present a continuing threat
2 to the public.

3 65. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment as follows:

- 6 a. For preliminary and permanent injunctive relief to stop Defendants from
7 engaging in the conduct described above;
- 8 b. Award \$10,000 in statutory and actual damages pursuant to 15 U.S.C. § 1681n
9 and California Civil Code § 1785.31;
- 10 c. Award punitive damages in order to deter further unlawful conduct pursuant to
11 15 U.S.C. § 1681n; and California Civil Code § 1785.31
- 12 d. Award \$2,500 in civil penalties pursuant to California Business & Professions
13 Code § 17206;
- 14 e. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §
15 1681n & o; California Civil Code § 1785.31;
- 16 f. For determination by the Court that Creditor's policies and practices are
17 unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and California
18 Business and Professions Code § 17200, et seq.;
- 19 g. For determination by the Court that Creditor's policies and practices are
20 unlawful and in negligent violation of 15 U.S.C. § 1681o

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands trial of this matter by jury.

23
24
25 **SAGARIA LAW, P.C.**

26
27 Dated: August 13, 2012

By: 

Elliot Gale, Esq.

Attorneys for Plaintiff

CASE NUMBER: CGC-12-523202 MARIAVIDA LEWIS VS. CITIBANK et al

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-16-2013

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-982-1600 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3876

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

1) EARLY SETTLEMENT CONFERENCES

The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): This program, provided in conjunction with the court, pairs parties with a two-member volunteer attorney panel. The panels are comprised of one plaintiff and one defense attorney, each with at least 10 years of trial experience. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist.

Operation: The settlement conference typically occurs 2 to 3 months prior to the trial date. BASF informs the participants of the conference date well in advance and provides the names of the panelists and location of the conference approximately 2 weeks prior to the conference. Panelists provide at **no cost** up to 2 hours of their time at each conference, and many panelists provide additional time at no cost if a settlement is imminent. A conference typically begins with a brief meeting with all parties and their attorneys during which each side presents an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of their cases, utilizing private meetings as appropriate. If a case does not settle during the first two hours, parties have the option to hire the panelists to continue the conference.

Cost: BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's ESP Coordinator at 415-782-9000 ext. 8717 or visit www.sfbar.org/esp.

(B) COURT SETTLEMENT CONFERENCE: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: A mediator provides at no cost one hour of preparation time and two hours of mediation time. After those three hours, if the case is not resolved, parties have the option to continue the process and pay the mediator at his or her regular hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties may select a specific mediator or BASF will help the parties make a selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process.

Cost: BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's Mediation Coordinator at 415-782-9000 ext. 8787 or visit www.sfbar.org/mediation.

(B) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's Arbitration Panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 30 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Cost: There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	FOR COURT USE ONLY CASE NUMBER: DEPARTMENT 610
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ **Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$250 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbbar.org/esp
- ☐ **Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$250 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbbar.org/mediation
- ☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- ☐ **Other ADR process (describe)** _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

 Name of Party Stipulating

 Name of Party Stipulating

 Name of Party or Attorney Executing Stipulation

 Name of Party or Attorney Executing Stipulation

 Signature of Party or Attorney

 Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Dated: _____

☐ Additional signature(s) attached

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Page 1 of 5

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (If not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):
- | Party | Description | Date |
|-------|-------------|------|
| | | |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

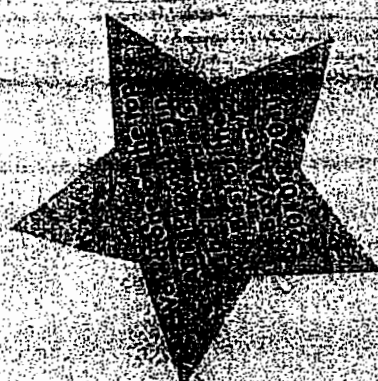
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

MEDIATION SERVICES



MEDIATION SERVICES

TESTIMONIALS

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

George Yuhus, Esq.
Ortrick, Herrington & Sutcliffe LLP

"We had an excellent experience and, after 8½ hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Friese, Esq.
Shattels Friese LLP

"When the other side made their offer, I thought there was no way we would reach an agreement – we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

Leslie Caplan
Global Warming Campaign Manager
Bluewater Network

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.
Campagnoli, Abelson & Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter

EXPERIENCED MEDIATORS ARE AVAILABLE IN THE FOLLOWING AREAS:

Construction
Contract Disputes
Employment
Insurance
Intellectual Property
Labor
Litigation
Medical Malpractice
Personal Injury
Real Estate
Retail
Technology
Transportation
Torts
Workers' Compensation
Wrongful Termination

THE ASSOCIATION OF
BASF
SAN FRANCISCO

WHAT IS BASF'S MEDIATION SERVICE?

The Bar Association of San Francisco's Mediation Services is a private mediation service which will assist you with almost any type of dispute, from simple contract disputes to complex commercial matters.

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website (www.sfbat.org/mediation) provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is also always available to assist you with selection or to answer questions.

HOW MUCH DOES THE SERVICE COST?

A \$250 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbat.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

WHY SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

OUR CASE IS FILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Visit our website (www.sfbat.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

Exhibit B

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 13 2012

CLERK OF THE COURT
BY: MARY ANN MORAN
Deputy Clerk

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7 Citibank, N.A.

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11

12
13 MARIAVIDA LEWIS,

14 Plaintiff,

15 vs.

16 CITIBANK, NATIONAL
17 ASSOCIATION, an FDIC insured
18 corporation and DOES 1 through 100
inclusive,

19 Defendants.
20 _____

CASE NO.: CGC12-523202

ANSWER TO UNVERIFIED
COMPLAINT BY CITIBANK, N.A.

BY FAX

1 Defendant CITIBANK, N.A. ("Defendant") hereby submits the following
2 Answer to the unverified Complaint filed in this action by plaintiff MARIAVIDA
3 LEWIS ("Plaintiff"):

4
5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30, Defendant generally
7 denies each and every allegation in the Complaint and each purported cause of action
8 therein.

9
10 **AFFIRMATIVE DEFENSES**

11 As and for separate affirmative defenses to the Complaint, Defendant alleges
12 as follows:

13
14 **FIRST AFFIRMATIVE DEFENSE**
15 **(Failure to State a Claim)**

16 The allegations of the Complaint fail to state a claim against Defendant upon
17 which relief can be granted.

18
19 **SECOND AFFIRMATIVE DEFENSE**
20 **(Statute of Limitations/Laches)**

21 The purported claims set forth in the Complaint are barred in whole or in part
22 by the applicable statutes of limitation and/or the equitable doctrine of laches.

23
24 **THIRD AFFIRMATIVE DEFENSE**
25 **(Arbitration)**

26 Plaintiff's claims are subject to arbitration pursuant to a binding arbitration
27 agreement contained in the terms and conditions governing the credit card account
28 that is the subject of this action, which agreement may be elected by either party

1 prior to trial or judgment. Defendant reserves its right to compel arbitration of
2 Plaintiff's claims.

3
4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Unclean Hands)**

6 The allegations in the Complaint and relief requested are, on information and
7 belief, barred in whole or in part by the doctrine of unclean hands.

8
9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(No Wilful Conduct)**

11 Defendant acted in good faith at all times in its dealings with Plaintiff, and if
12 any conduct by Defendant is found to be unlawful, which Defendant expressly
13 denies, such conduct was not willful and should not give rise to liability.

14
15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 Plaintiff, although under a legal obligation to do so, has failed to take
18 reasonable steps to mitigate any alleged damages that she may have and is therefore
19 barred from recovering damages, if any, from Defendant.

20
21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Waiver)**

23 Plaintiff has waived her rights, if any, to recover the relief she seeks in the
24 Complaint based upon her own conduct and admissions with respect to the financial
25 obligation at issue.

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27 //

28 //

EIGHTH AFFIRMATIVE DEFENSE**(Good Faith)**

Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

NINTH AFFIRMATIVE DEFENSE**(Apportionment)**

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of this Defendant should be reduced accordingly.

TENTH AFFIRMATIVE DEFENSE**(Supervening Cause)**

The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

ELEVENTH AFFIRMATIVE DEFENSE**(Equitable Indemnity)**

To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

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TWELFTH AFFIRMATIVE DEFENSE**(Failure To Comply With Conditions Precedent)**

Plaintiff's claims are barred in whole or in part by her failure to comply with a condition precedent to the relief she seeks.

THIRTEENTH AFFIRMATIVE DEFENSE**(First Amendment)**

Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution. Plaintiff's proposed interpretation of the Fair Credit Reporting Act, California Consumer Credit Reporting Agencies Act, and California Unfair Business Practices Act must be rejected as it would place an unreasonable restraint upon Defendant's First Amendment rights, thereby raising serious constitutional issues.

FOURTEENTH AFFIRMATIVE DEFENSE**(Standing)**

Plaintiff has not suffered any injury in fact as a result of Defendant's alleged conduct and therefore lacks standing to sue.

FIFTEENTH AFFIRMATIVE DEFENSE**(Preemption)**

Plaintiff's claims under state law are barred in whole or in part by the doctrine of preemption.

SIXTEENTH AFFIRMATIVE DEFENSE**(Privilege)**

Plaintiff's claims fail, in whole or in part, because Defendant's conduct, as alleged in the Complaint, was subject to a complete or qualified privilege.

1 WHEREFORE, Defendant requests judgment as follows:

- 2 1. That Plaintiff takes nothing by the Complaint, which should be dismissed
3 with prejudice.
4 2. That Defendant recover from Plaintiff its costs according to proof.
5 3. That Defendant recover its attorneys' fees according to proof.
6 4. That the Court orders such other further reasonable relief as the Court may
7 deem just and proper.

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9 DATED: September 12, 2012

SIMMONDS & NARITA LLP
JEFFREY A. TOPOR
R. TRAVIS CAMPBELL

10
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12 By: _____

Jeffrey A. Topor
Attorneys for defendant
Citibank, N.A.

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

1) **ANSWER TO UNVERIFIED COMPLAINT BY
CITIBANK, N.A.**

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressee indicated below:

VIA U.S. MAIL

Scott J. Sagaria
Elliot W. Gale
Sagaria Law, P.C.
333 West San Carlos Street, Suite 1750
San Jose, CA 95110
Counsel for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 13th day of September, 2012.



Sally Koo